

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Wang et al
Application No.:	10/797996
Filed:	March 11, 2004
For:	Balloon Structure With PTFE Component (Appeal No. 2009-0077)
Group Art Unit:	1791

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2Q-7182-US02

RENEWED PETITION

Patentee timely filed a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. §1.705 dated May 24, 2010.

Patentee received a Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth dated June 2, 2010 in which Patentee's Request for Recalculation was Dismissed.

On June 23, 2010, Applicants conducted a teleconference with a representative from the Office of Patent Legal Administration (tel.(571)272-7702) of the Patent and Trademark Office at which time Applicants were informed that the petition was erroneously coded by the USPTO. The petition was treated as if form sb131 was improperly submitted. Form sb131 can only be used for patents issued prior to March 2, 2010. The instant patent issued March 23, 2010. Because of this, Applicants did not use form sb131, but, rather, filed a petition using a 705d request. Applicants are submitting a copy of the above-mentioned petition.

Applicants believe the petition was improperly dismissed and request reconsideration of the petition and recalculation of the patent term adjustment.

Respectfully submitted,
VIDAS, ARRETT & STEINKRAUS

Date: June 23, 2010

By: /Lisa Ryan-Lindquist/
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Electronic Acknowledgement Receipt

EFS ID:	7677469
Application Number:	10797996
International Application Number:	
Confirmation Number:	6285
Title of Invention:	BALLOON STRUCTURE WITH PTFE COMPONENT
First Named Inventor/Applicant Name:	Lixiao Wang
Customer Number:	00490
Filer:	Martha Jeanne Engel
Filer Authorized By:	
Attorney Docket Number:	563.2-7182-US02
Receipt Date:	24-MAY-2010
Filing Date:	11-MAR-2004
Time Stamp:	18:57:11
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$200
RAM confirmation Number	8704
Deposit Account	
Authorized User	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
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1		07182US02_patentterm_docs_20100524.pdf	294671 <small>u/6677c1a1a4802ad108b0c2f01b461f18a0105</small>	yes	7
Multipart Description/PDF files in .zip description					
	Document Description	Start	End		
	Miscellaneous Incoming Letter	1	1		
	Patent Term Adjustment Petition	2	7		
Warnings:					
Information:					
2	Fee Worksheet (PTO-875)	fee-info.pdf	30705 <small>ba726075e011a0408102153d3c3e04a281810402a</small>	no	2
Warnings:					
Information:					
Total Files Size (in bytes):			325376		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><u>New Applications Under 35 U.S.C. 111</u> If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><u>National Stage of an International Application under 35 U.S.C. 371</u> If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><u>New International Application Filed with the USPTO as a Receiving Office</u> If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

Electronic Patent Application Fee Transmittal

Application Number:	10797996			
Filing Date:	11-Mar-2004			
Title of Invention:	BALLOON STRUCTURE WITH PTFE COMPONENT			
First Named Inventor/Applicant Name:	Lixiao Wang			
Filer:	Martha Jeanne Engel/Elizabeth Deutsch			
Attorney Docket Number:	S63.2-7182-US02			
Filed as Large Entity				
Utility under 35 USC 111(a) Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Application for patent term adjustment	1455	1	200	200
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				200

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TRANSMITTAL LETTER

1. In regard to the above-identified application, in addition to this 1 page transmittal letter, we are submitting the attached: **4 page Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. § 1.705 and 2 page Copy of PAIR Patent Term Adjustment.**
2. With respect to fees, applicant believes the fees required herein, if any, are being paid electronically.
3. **CONDITIONAL PETITION FOR EXTENSION OF TIME**
This conditional petition is being filed along with the papers identified in Item 1 above and provides for the possibility that Applicant has inadvertently overlooked the need for a petition and fee for extension of time or for a petition and fee for any other matter petitionable to the Commissioner as required. If any extension of time for the accompanying response is required or if a petition for any other matter is required, by petitioner, Applicant requests that this be considered a petition therefor.
4. **Notwithstanding paragraph 2 above, if any additional fees associated with this communication are required and have not otherwise been paid, including any fee associated with the Conditional Petition for Extension of Time, or any request in the accompanying papers for action which requires a fee as a petition to the Commissioner, please charge the additional fees to Deposit Account No. 22-0350. Please charge any additional fees associated with this communication to the Deposit Account No. 22-0350.**
5. **Certification:** I hereby certify that this Transmittal Letter and the paper(s) as described herein are being transmitted electronically to the USPTO on May 24, 2010.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: May 24, 2010

By: /Martha J. Engel/
Martha J. Engel
Registration No.: 61534

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In re Application of:	Wang et al
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Docket No.: S63.2Q-7182-US02

Request for Reconsideration of Patent Term Adjustment, 37 C.F.R. § 1.705

The patentee hereby requests reconsideration, under 35 U.S.C. § 154(d), of the Determination of Patent Term Adjustment (PTA) made by the Director as indicated on the issued patent. Applicant requests reconsideration of the PTA Determination because the USPTO failed to properly adjust for the period between the three-year date and the issue date of the patent pursuant to 37 C.F.R. § 1.702(b).

Determination of Patent Term Adjustment

As indicated on the issued patent, the patent term adjustment is 1533 days. Attached is the PAIR record showing the basis for this determination, which is believed to be incorrect.

The above referenced application was filed on March 11, 2004 and so is entitled to the benefit of the current version of 35 U.S.C. § 154. The PTA determination fails to follow the calculation method required by law.

- (1) This request is being timely filed on May 24, 2010. The patent issued on March 23, 2010. Under 37 C.F.R. § 1.705(d), Applicant has two months after the date of issuance of the patent to request reconsideration of the patent term adjustment. May 23, 2010 falls on a Sunday and, under 35 U.S.C. § 21(b), Applicant has until the next succeeding secular or business day to take action

when the period ends on a Sunday. Therefore it is clear that this request for patent adjustment pursuant to 37 C.F.R. §1.702(b) is timely.

- (2) This request is accompanied by the fee set forth in 37 CFR § 1.18(e).
- (3) Statement of the facts involved:
- (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:
- | | |
|--|--------|
| USPTO delay days to the issuance of the first Office Action as indicated on PAIR | + 631 |
| Other delay days post-first Office Action as indicated by PAIR | + 676 |
| Total USPTO delay days as indicated by PAIR | =1307 |
| Applicant's delay days as indicated on PAIR | - 31 |
| Non-overlapping three year days | + 432 |
| Correct Adjustment | = 1708 |
- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 1533 days fails to properly include all of the USPTO delay days. The USPTO delayed **631** days between the 14 month date (May 11, 2005) and the mailing date of the first Office Action (February 1, 2007), as indicated on PAIR.

The USPTO delayed **676** days between the filing date of the Notice of Appeal (November 16, 2007) and the mailing date of the decision by the Board of Patent Appeals and Interferences (September 21, 2009), as indicated on PAIR.

Applicant had **31** delay days between the three-month deadline for the Response to the Final Office Action (mailed July 16, 2007) and the filing date of the Notice of Appeal (November 16, 2007) as indicated by PAIR.

Applicant notes that the patent term adjustment calculation provided with the Notice of Allowance (which did not include a calculation of the delay for the period between the three-year date and the issue date under 37 C.F.R. §§ 1.702(b) & 1.703(b)) was 1276 days ($631 + 676 - 31 = 1276$). Following the calculation of the delay period between the three-year date and the issue date, PAIR indicates the patent term adjustment to be 1533 days.

However:

There were 1108 days between the three year date (March 11, 2007) and the issue date of the patent (March 23, 2010). Not all of those days are accounted for on PAIR as USPTO delay.

According to 37 C.F.R. § 1.703(b)(4), the period between the filing date of the Notice of Appeal (November 16, 2007) and the mailing date of the decision by the Board of Patent Appeals and Interferences (September 21, 2009) is subtracted from the three-year delay period. In this case, the appellate delay period is 676 days. Applicant notes that, because the appeal was successful, Applicant recoups this period under 37 C.F.R. §§ 1.702(e) & 1.703(e). This is already accounted for on PAIR.

Therefore, Applicant is entitled to an additional **432** non-overlapping days ($1108 - 676 = 432$) beyond the calculation on PAIR to account for the delays between the three year date (March 11, 2007) and the issue date of the patent (March 23, 2010). Thus the total adjustment that should have been shown on the face of the patent 35 U.S.C. § 154(b) is **1708** days ($631 + 676 + (1108 - 676) - 31 = 1708$).

(iii) The patent is not subject to a terminal disclaimer.

(iv)(A) Applicant has included herewith a copy of the print-out from the USPTO's PAIR Patent Term Adjustment page for the above file. Applicant has not verified the USPTO's determination but accepts it for the purposes of this petition.

All items required under 37 C.F.R. § 1.705 having been provided herein, the Applicant requests that the Patent Term Adjustment be corrected to show an adjustment of 1708 days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: May 24, 2010

By: /Martha J. Engel/
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10/797,996 BALLOON STRUCTURE WITH PTFE COMPONENT

05-24-
2010::18:41:20**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/797,996

Filing or 371(c) Date:	03-11-2004	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	03-23-2010	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1533
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
03-23-2010	PTA 36 Months	257	
03-23-2010	Patent Issue Date Used in PTA Calculation		
02-16-2010	Dispatch to FDC	⚡	
02-10-2010	Application Is Considered Ready for Issue	⚡	
02-02-2010	Issue Fee Payment Verified	⚡	
02-02-2010	Issue Fee Payment Received	⚡	
11-02-2009	Mail Notice of Allowance	⚡	
10-29-2009	Document Verification	⚡	
10-29-2009	Notice of Allowance Data Verification Completed	⚡	
10-29-2009	Case Docketed to Examiner in GAU	⚡	
09-21-2009	Mail BPAI Decision on Appeal - Reversed	676	
09-18-2009	BPAI Decision - Examiner Reversed	⚡	
10-08-2008	Docketing Notice Mailed to Appellant	⚡	
10-07-2008	Assignment of Appeal Number	⚡	
08-05-2008	Appeal Awaiting BPAI Docketing	⚡	
07-01-2008	Mail Reply Brief Noted by Examiner	⚡	
06-25-2008	Reply Brief Noted by Examiner	⚡	
06-18-2008	Date Forwarded to Examiner	⚡	
06-17-2008	Reply Brief Filed	⚡	
05-10-2008	Exam. Ans. Review Complete	⚡	
05-08-2008	Examiner's Answer to Appeal Brief	⚡	
03-06-2008	Appeal Brief Review Complete	⚡	
03-06-2008	Date Forwarded to Examiner	⚡	
02-26-2008	Appeal Brief Filed	⚡	
02-05-2008	Notice -- Defective Appeal Brief	⚡	
02-01-2008	Appeal Brief Review Complete	⚡	
02-01-2008	Date Forwarded to Examiner	⚡	
01-16-2008	Defective / Incomplete Appeal Brief Filed	⚡	
01-16-2008	Appeal Brief Filed	⚡	
12-12-2007	Mail Appeals conf. Proceed to BPAI	⚡	
12-10-2007	Pre-Appeals Conference Decision - Proceed to BPAI	⚡	

11-16-2007	Request for Pre-Appeal Conference Filed	🔍	
11-16-2007	Notice of Appeal Filed		31
11-16-2007	Request for Extension of Time - Granted	🔍	
10-05-2007	Case Docketed to Examiner in GAU	🔍	
09-19-2007	Mail Advisory Action (PTOL - 303)	🔍	
09-17-2007	Advisory Action (PTOL-303)	🔍	
09-13-2007	Date Forwarded to Examiner	🔍	
09-12-2007	Amendment after Final Rejection	🔍	
07-16-2007	Mail Final Rejection (PTOL - 326)	🔍	
07-09-2007	Final Rejection		
05-04-2007	Date Forwarded to Examiner		
05-01-2007	Response after Non-Final Action		
02-01-2007	Mail Non-Final Rejection	631	
01-31-2007	Non-Final Rejection	🔍	
08-27-2004	Information Disclosure Statement considered	🔍	
03-11-2004	Information Disclosure Statement considered	🔍	
06-30-2006	Case Docketed to Examiner in GAU	🔍	
05-10-2006	Case Docketed to Examiner in GAU	🔍	
08-27-2004	Reference capture on IDS	🔍	
08-27-2004	Information Disclosure Statement (IDS) Filed	🔍	
08-27-2004	Information Disclosure Statement (IDS) Filed	🔍	
09-03-2004	IFW TSS Processing by Tech Center Complete	🔍	
09-03-2004	Case Docketed to Examiner in GAU	🔍	
03-11-2004	Reference capture on IDS	🔍	
03-11-2004	Information Disclosure Statement (IDS) Filed	🔍	
03-11-2004	Information Disclosure Statement (IDS) Filed	🔍	
03-11-2004	Preliminary Amendment	🔍	
05-27-2004	Application Return from OIPE	🔍	
05-27-2004	Application Return TO OIPE	🔍	
05-27-2004	Application Dispatched from OIPE	🔍	
05-27-2004	Application Is Now Complete	🔍	
04-22-2004	Cleared by L&R (LARS)	🔍	
04-08-2004	Referred to Level 2 (LARS) by OIPE CSR	🔍	
03-29-2004	IFW Scan & PACR Auto Security Review	🔍	
03-11-2004	Initial Exam Team nn	🔍	

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